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89-1059 (1)

Supreme Court, U.S.
FILED
DEC 4 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO._____

IN THE SUPREME COURT OF THE
UNITED STATES

ROY LEE PAYNE,

PETITIONER,

vs.

UNITED STATES OF AMERICA,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

COUNSEL FOR PETITIONER:

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QUESTION PRESENTED

Did the District Court err in overruling Petitioner's Motion to Suppress evidence obtained by means of electronic surveillance?

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OPINION BELOW

The opinion of the Court of Appeals below, (App. iv), is not reported. The Opinion of the District Court below, (App. vi), is not reported.

JURISDICTION

The judgment of the Court below, (App. vi), was entered on October 4, 1988. Rehearing was not sought. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTION PROVISION AND STATUTES INVOLVED

1. The Fourth Amendment, United States Constitution, which provides:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

2. The Statute under which Petitioner was prosecuted though nothing turns on its terms, was 18 U.S.C. 922(g)(1) and 18 U.S.C. 922(a)(1)(B), which provided as follows:

18 U.S.C. 922(g)(1): "It shall be unlawful for any person who has been convicted in any Court of, a crime punishable by imprisonment for a term exceeding one year to ship or transport any firearm or ammunition in interstate or foreign commerce."

18 U.S.C. 922(a)(1)(B): "It shall be unlawful for any person except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to

ship, transport, or receive any ammunition in interstate or foreign commerce."

STATEMENT OF THE CASE

A. COURSE OF PROCEEDINGS IN THE SECTION 2255 CASE NOW BEFORE THIS COURT.

On September 20, 1988, in a cause then pending in the United States District Court for the Eastern District Court of the Northeastern Division, entitled United States of America v. Roy Lee Payne, Criminal No. _____. Petitioner was found guilty by a jury on an indictment of one count charging violations of 18 U.S.C. 922(g)(1) and 18 U.S.C. 922 (a)(1)(B).

On February 13, 1989 the District Court entered Judgment and Petitioner was sentenced to six months imprisonment, a fine of Five Thousand ($5,000.00) Dollars, two years supervised release under conditions that he not possess a firearm. This Judgment and sentence was affirmed by the Court of

Appeals for the Sixth Circuit, United States of America v. Roy Lee Payne, No.: 89-5189. He is presently released on parole.

B. RELEVANT FACTS CONCERNING THE UNDERLYING CONVICTION OF KNOWINGLY POSSESSION IN COMMERCE AND EFFECTING COMMERCE A FIREARM, AFTER HAVING BEEN CONVICTED OF A CRIME PUNISHABLE BY IMPRISONMENT FOR A TERM EXCEEDING ONE YEAR.

Petitioner agreed to cooperate with the Washington County Sheriff's Department in an effort to help uncover a large interstate theft ring working in the Knoxville/Chattanooga areas. As a part of Petitioner's efforts, he was able to purchase the two revolvers involved in this trial and a camera from some girls operating a massage parlor.

These weapons were kept by

Petitioner in a safe at his mother's business house. An employee there stole the .38 revolver, Petitioner got information assisting Sheriff's Deputies in obtaining a search warrant and recovery of this weapon. Officer Ford following the recovery of the weapon, and while in his possession, notified Special ATF Agent, Bobby H. Bilbo, that Petitioner was a convicted felon and details of this revolver.

A plan was formulated whereby Ford, a longtime friend of Petitioner, and acting under the direction of the ATF Agent, was to contact Petitioner in an attempt to purchase this .38 revolver. Through the assistance of ATF Agent, Ford made several telephone conversations with Petitioner concerning the purchase of the .38 weapon and another weapon, a .357

Magnum pistol (for which he is prosecuted). These various telephone conversations were taped without Petitioner's knowledge. Ford was also wired with equipment to receive a conversation with the Petitioner at the latter's office located at his mother's business. This conversation was then recorded by a device in the ATF Agent's vehicle parked outside the business. These tapes were played over the objection of Petitioner's counsel for the jury. Craig Ford did purchase both weapons from Petitioner and the indictment in this case resulted from those transactions.

C. REASON FOR GRANTING THE WRIT OF CERTIORARI.

Petitioner most insistently urges that his Fourth Amendment Rights

were violated when the ATF Agent, with whom Petitioner was in conversation at his office, had a transmitter attached to himself and the conversation was recorded in an automobile parked with Agent located near the business house.

All of these recorded conversations took place over a period of twenty-one days and it was only reasonable for Petitioner to assume his right of privacy was protected during the conversations with Officer Craig Ford.

This Court held in Katz v. United States, 389 U. S. 347, 88 S. Ct. 507, 19 L Ed, 2d 576 (1967), that the Fourth Amendment extended coverage beyond the seizure of "Tangible Items", the recordings of oral statements or conversations that are overheard without technical trespass under local law;

however, this Court in United States v. White, 401 U. S. 745, 453, 91 S. Ct. 1122 28 L Ed 2d 453 (1971) may have eroded skillful or more appropriate Katz v. United States, supra. This is true even though the main opinion expressly finds the decision of the Seventh Circuit Court in error since the facts in White occurred before the Katz decision, and the latter was not to be retroactive.

There is probably no area within the criminal law where there is any more confusion as to Court Decisions and textbook writers than here. For both textbook writers and Courts continue to cite Katz v. United States wherein it would seem that recorded conversations are within the protection of the Fourth Amendment; and the White case, supra, which would indicate that recorded conversations are not protected by the

Fourth Amendment.

In the case at hand the law enforcement agents over a period of twenty-one days recorded several telephone conversations between the Petitioner and Officer Craig Ford and there was no reason that these officers could not have appeared before a District Judge on a showing of probable cause and obtained a proper Order. However, conceding that the Petitioner is entitled to rely upon the Fourth Amendment protection as to the telephone calls recorded; the fact that a body recorder was placed on the agent at the time of a face to face conversation with the Petitioner at Petitioner's office and the conversation transmitted to other agents recording same in an automobile outside the building seems far more grave and entitled to Fourth Amendment

protection. This law enforcement agent was not in a public place but on the premises of the Petitioner where the Petitioner could have assumed that his conversation was private and protected under the Constitution of the United States.

It seems most appropriate to reconsider the dissenting opinion of Justice Douglas from White, not merely for its historical account but its rationale in matters such as the case at bar.

"The issue in this case is clouded and concealed by the very discussion of it in legalistic terms. What the ancients knew as "eavesdropping", we now call "electronic surveillance"; but to equate the two is to treat man's first gunpowder on the same level as the nuclear bomb. Electronic surveillance is the greatest leveler of human privacy ever known. How most forms of it can be held "reasonable" within the meaning of the Fourth Amendment is a mystery. To be sure, the Constitution and Bill of Rights are not to be read as covering only the technology known in the 18th Century.

Otherwise, its concept of "commerce" would be hopeless when it comes to the management of modern affairs. At the same time the concepts of privacy which the Founders enshrined in the Fourth Amendment vanish completely when we slavishly allow an all-powerful government, proclaiming law and order, efficiency, and other benign purposes, to penetrate all the walls and doors which men need to shield them from the pressures of a turbulent life around them and give them the health and strength to carry on.

That is why a "strict construction" of the Fourth Amendment is necessary if every man's liberty and privacy are to be constitutionally honored.

When Franklin D. Roosevelt on May 21, 1940, authorized wiretapping in cases of "fifth column" activities and sabotage and limited it "insofar as possible to aliens", he said that "under ordinary and normal circumstances wiretapping by Government agents should not be carried on for the excellent reason that it is almost bound to lead to abuse of civil rights". See Appendix I to this dissent. Yet as Judge Ferguson said in United States v. Smith, 321 F Supp 424, 429: "The government seems to approach these dissident domestic organizations in the same fashion as it deals with unfriendly foreign powers. The government cannot act in this manner when only domestic political organizations are involved, even if those organizations espouse views which are inconsistent with our present form of government. To do so is to ride roughshod over numerous political

freedoms which have long received constitutional protection. The government can, of course, investigate and prosecute criminal violations whenever these organizations, or rather their individual members, step over the line of political theory and general advocacy and commit illegal acts".

Today no one perhaps notices because only a small, obscure criminal is the victim. But every person is the victim, for the technology we exalt today is every man's master. Any doubter should read Arthur R. Miller's "The Assault on Privacy" (1971). After describing the monitoring of conversations and their storage in data banks, Professor Miller goes on to describe "human monitoring" which he calls the "ultimate step in mechanic snooping" - a device for spotting unorthodox or aberrational behavior across a wide spectrum. "Given the advancing state of both the remote sensing art and the capacity of computers to handle an uninterrupted and synoptic data flow, there seem to be no physical barriers left to shield us from intrusion", Id., at 46.

When one reads what is going on in this area today, our judicial treatment of the subject seems as remote from reality as the well-known Baron Parke was remote from the social problems of his day". See Chapman, "Big Brother" in the Justice Department, The Progressive, April, 1971, p. 27.

II

We held in Berger v. New York, 388 U.S. 41, 18 L Ed 2d 1040, 87 S Ct

1873, that wiretapping is a search and seizure within the meaning of the Fourth Amendment and therefore must meet its requirements, there must be a prior showing of probable cause, the warrant authorizing the wiretap must particularly describe "the place to be searched, and the persons or things to be seized", and that it may not have the breadth, generality, and long life of the general warrant against which the Fourth Amendment was aimed.

In Katz v. United States, 389 U.S. 347, 19 L Ed 2d 576, 88 S Ct 507, we held that an electronic device used without trespass onto any given enclosure (there a telephone booth), was a search for which a Fourth Amendment warrant was needed. Mr. Justice Stewart, speaking for the Court, said: "Wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures". Id., at 359, 19 L Ed 2d at 586.

As a result of Berger and Katz, both wiretapping and electronic surveillance through a "bug" or other device are now covered by the Fourth Amendment.

There were prior decisions representing an opposed view. In On Lee v. United States, 343 U.S. 747, 96 L Ed 1270, 72 S Ct 967, an undercover agent with a radio transmitter concealed on his person interviewed the Defendant whose words were heard over a radio receiver by another agent down the street. The idea discredited by Katz, that there was no violation of the Fourth Amendment because there was no trespass, was the core of the On Lee decision. Id., at 751-754, 96 L Ed at 1274-1275.

Lopez v. United States, 373 U.S. 427, 10 L Ed 2d 464, 83 S Ct 1381, was also pre-Berger and pre-Katz. The government agent there involved carried a pocket wire recorder which the Court said "was not planted by means of an unlawful physical invasion of Petitioner's premises under circumstances which would violate the Fourth Amendment". Id., at 439, 10 L Ed 2d at 470.

Mr. Justice Brennan, dissenting, stated the philosophy of Katz soon to be adopted: "There is a qualitative difference between electronic surveillance, whether the agents conceal the devices on their persons or in walls or under beds, and conventional police stratagems such as eavesdropping and disguise. The latter do not so seriously intrude upon the right of privacy. The risk of being overheard by an eavesdropper or betrayed by an informer or deceived as to the identity of one with whom one deals is probably inherent in the conditions of human society. It is the kind of risk we necessarily assume whenever we speak. But as soon as electronic surveillance comes into play, the risk changes crucially. There is no security from that kind of eavesdropping, no way of mitigating the risk, and so not even a residuum of true privacy....

"...Electronic aids add a wholly new dimension to eavesdropping. They make it more penetrating, more indiscriminate, more truly obnoxious to a free society. Electronic surveillance, in fact, makes the police omniscient; and police omniscience is one of the most effective tools of tyranny", 373 U.S., at 465-466, 10 L Ed 2d at 486.

It is urged by the Department

of Justice that On Lee be established as the controlling decision in this field. I would stand by Berger and Katz and reaffirm the need for judicial supervision under the Fourth Amendment of the use of electronic surveillance which, uncontrolled, promises to lead us into a police state.

There were wholly pre-arranged episodes of surveillance. The first was in the informant's home to which Respondent had been invited. The second was also in the informer's home, the next day. The third was four days later at the home of the Respondent. The fourth was in the informer's car two days later. Twelve days after that a meeting in the informer's home was intruded upon. The sixth occurred at a street rendezvous. The seventh was in the informer's home and the eighth in a restaurant owned by Respondent's mother-in-law. So far as time is concerned there is no excuse for not seeking a warrant. And while there is always an effort involved in preparing affidavits or other evidence in support of a showing of probable cause, that burden was given constitutional sanction in the Fourth Amendment against the activities of the agents of George III. It was designed not to protect criminals but to protect everyone's privacy.

On Lee and Lopez are of a vintage opposed to Berger and Katz. However, they may be explained, they are products of the old common law notices of trespass. Katz, on the other hand, emphasized that with few exceptions "searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment...", 389 U.S.,

at 357, 19 L Ed 2d at 585. Camara v. Municipal Court, 387 U.S. 523, 18 L Ed 2d 930, 87 S Ct 1727 put administrative searches under the Fourth Amendment. We held that administrative actions, like other searches, implicated officials in an invasion of privacy and that the Fourth Amendment was meant to guard against the arbitrariness of any such invasion. We said: "We simply cannot say that the protections provided by the warrant procedure are not needed in this context; broad statutory safeguards are no substitute for individualized review, particularly when those safeguards may only be invoked at the risk of a criminal penalty", Id., at 533, 18 L Ed 2d at 937.

In Chimel v. California, 395 U.S. 752, 23 L Ed 2d 685, 89 S Ct 2034, in considering the constitutionality of a search incident to an arrest we held that, while the area in the immediate reach of an arrestee is "reasonable" though made without a warrant, a search beyond that zone may generally be made "only under the authority of a search warrant". Id., at 763, 23 L Ed 2d at 694. And in two "stop and frisk" cases, Terry v. Ohio, 392 U.S. 1, 20 L Ed 2d 889, 88 S Ct 1868, and Davis v. Mississippi, 394 U.S. 721, 22 L Ed 2d 676, 89 S Ct 1394, we held that any restraint of the person, however brief, was subject to judicial inquiry on "reasonableness" (392 U.S., at 19, 20 L Ed 2d at 904) and that "The Fourth Amendment governs all intrusions by agents of the public upon personal security...". Id., at 18, 15, 20 L Ed 2d at 903...

We have moved far away from the rationale of On Lee and Lopez and only a

retrogressive step of large dimensions would bring us back to it.

The threads of thought running through our recent decisions are that these extensive intrusions into privacy made by electronic surveillance make self-restraint by law enforcement officials an inadequate protection, that the requirement of warrants under the Fourth Amendment is essential to a free society.

Monitoring, if prevalent, certainly kills free discourse and spontaneous utterances. Free discourse - a First Amendment value - may be frivolous or serious, humble or defiant, reactionary or revolutionary, profane or in good taste; but it is not free if there is surveillance. Free discourse liberates the spirit, though it may produce only froth. The individual must keep some facts concerning his thoughts within a small zone of people. At the same time he must be free to pour out his woes or inspirations or dreams to others. He remains the sole judge as to what must be said and what must remain unspoken. This is the essence of the idea of privacy implicit in the First and Fifth Amendments as well as in the Fourth.

The philosophy of the value of privacy reflected in the Fourth Amendment's ban on "unreasonable searches and seizures" has been forcefully stated by a former Attorney General of the United States:

"Privacy is the basis of individuality. To be alone and be let alone, to be with chosen company, to say what you think, or don't think, but to say what you will, is to be yourself. Solitude is imperative, even in a high

rise apartment. Personality develops from within. To reflect is to know yourself. Character is formed through years of self-examination. Without this opportunity, character will be formed largely by uncontrolled external social stimulations. Americans are excessively homogenized already".

"Few conversations would be what they are if the speakers thought others were listening. Silly, secret, thoughtless and thoughtful statements would all be affected. The sheer number in our lives, the anonymity of urban living and the inability to influence things that are important are depersonalizing and dehumanizing factors of modern life. To penetrate the last refuge of the individual, the precious little privacy that remains, the basis of individual dignity, can have meaning to the quality of our lives that we cannot foresee. In terms of present values, that meaning cannot be good".

"Invasions of privacy demean the individual. Can a society be better than the people composing it? When a government degrades its citizens, or permits them to degrade each other, however, beneficent the specific purpose, it limits opportunities for individual fulfillment and national accomplishment. If America permits fear and its failure to make basic social reforms to excuse police use of secret electronic surveillance, the price will be dear indeed. The practice is incompatible with a free society". R. Clark, Crime in America, 287 (1970)

Now that the discredited decisions in On Lee and Lopez are resuscitated and reviewed, must everyone

live in fear that every word he speaks may be transmitted or recorded and later repeated to the entire world? I can imagine nothing that has a more chilling effect on people speaking their minds and expressing their views on important matters. The advocates of that regime should spend some time in totalitarian countries and learn firsthand the kind of regime they are creating here.

III

The decision not to make Katz retroactive to any electronic surveillance which occurred prior to December 18, 1967 (the day we decided Katz), is not, in my view, a tenable one for the reasons stated by Mr. Justice Harlan and me in our dissents in Desist v. United States, 394 U.S. 244, 255, 256, 22 L Ed 3d 248, 258, 89 S Ct 1030".

CONCLUSION

In conclusion Petitioner strongly insists that his Fourth Amendment rights were violated when the Law Enforcement Officer with a body recorder came to his office and the conversation between the two men was transmitted and taped.

RESPECTFULLY SUBMITTED,

BY: _____

O. M. WILSON
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APPENDIX

Motion to Suppress. . . . . .app. i

Opinion of the Court of Appeals .app. iv

Opinion of the District Court . .app. vi

Judgment of the Court . . . . . .app. vi

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION

UNITED STATES OF AMERICA*
*
vs. * NO. CR-2-88-14
*
ROY LEE PAYNE *

MOTION TO SUPPRESS

NOW COMES the Defendant, Roy Lee Payne, by his attorney, Max D. Wilson, and moves under authority of 2518(10)(a), Title 18 U.S.C. for the suppression of the contents of any and all intercepted telephone and surveillance recorded conversations on the ground that said communications were unlawfully recorded and in violation of Defendant's right of privacy assured him by the mandates of the Fourth and Fifth Amendments of the United States Constitution.

DATED this 19th day of August, 1988.

RESPECTFULLY SUBMITTED,

MAX E. WILSON
ATTORNEY FOR DEFENDANT
WILSON, WILSON & CUPP
303 West Main Street
Mountain City, TN 37683
(615) 727-9300

CERTIFICATE

The undersigned certifies that a true and perfect copy of the foregoing Motion has been served upon J. Edgar Schmutzer, Assistant U. S. Attorney, by forwarding the same to him at his address of U. S. Courthouse Building, 101 Summer Street, West, Greeneville, Tennessee 37743-4923, in the U. S. Mail, with proper postage thereon.

THIS the 18th day of August, 1988.

MAX E. WILSON
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303 West Main Street
P. O. Box 906
Mountain City, TN 37683
(615) 727-9300

IN THE UNITED STATES DISTRICT COURT
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA

PLAINTIFF -
APPELLEE

v. ORDER

ROY LEE PAYNE

DEFENDANT -
APPELLANT

BEFORE: BOGGS and NORRIS, Circuit Judges; and EDWARDS, Senior Circuit Judge.

This cause having come on to be heard upon the record, the briefs and the oral argument of the parties, and upon due consideration thereof,

The Court finds that no prejudicial error intervened in the judgment and proceedings in the district court, and it is therefore ORDERED that said judgment be and it hereby is affirmed.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
LEONARD GREEN, CLERK

EASTERN DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA

v.

ROY LEE PAYNE

CASE NUMBER: CR-2-88-14

JUDGMENT INCLUDING SENTENCE
UNDER THE SENTENCING REFORM ACT

MAX WILSON, ESQ.
DEFENDANT'S ATTORNEY

THE DEFENDANT:

_____ pleaded guilty to count(s)

_____.

__x__ was found guilty on count(s)

__one__ after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section: 18:922(g)(1)

18:924(a)(1)(B)

Nature of Offense: Did knowingly possess in commerce and affecting commerce, a firearm, that is, a .357

caliber Smith & Wesson revolver, after having been convicted on/about June 21, 1985, of a crime punishable by imprisonment for a term exceeding one year.

Count Number(s): One of the superceding indictment.

The defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984

_____ The defendant has been found not guility on count(s) _____, and is discharged as to such count(s).

_____ Count(s) _____ (is) (are) dismissed on the motion of the United States.

__x__ The mandatory special assessment is included in the portion of this Judgment that imposes a fine.

_____ It is ordered that the defendant

shall pay to the United States a special assessment of $_____, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within thirty days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec. Number: 415-68-9341

Defendant's Mailing Address:

Route #5

Jonesborough, TN 37659

Defendant's residence address:

Route #5

Jonesborough, TN 37659

Date of Imposition of Sentence:

February 13, 1989

Signature of Judicial Officer:

/s/ Thomas G. Hull

Name & Title of Judicial Officer:

Thomas G. Hull,

U. S. District Judge

Date:

February 13, 1989

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of six (6) months.

The imposition of this sentence is stayed due to the notice given by the defendant of his intention to appeal.

__x__ The Court makes the following recommendations to the Bureau of Prisons: that the defendant serve his

sentence at the community treatment center in Bristol, Tennessee.

_____ The defendant is remanded to the custody of the United States Marshal.

_____ The defendant shall surrender to the United States Marshal for this district,

_____ at ____.m. on _____.

_____ as notified by the Marshal.

_____ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons

_____ before 2 p.m. on _____.

_____ as notified by the United States Marshal.

_____ as notified by the Probation Office.

RETURN

I have executed this Judgment as follows:

_____

_____

_____

_____

Defendant delivered on ___ to

at _____,

with a certified copy of this Judgment.

_____
U. S. Marshal

BY: _____
Deputy Marshal

Defendant: Roy Lee Payne
Case Number: CR-2-88-14

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of two (2) years.

While on supervised release, the defendant shall not commit another Federal, state or local crime and shall comply with the standard conditions that have been adopted by this court (set forth on the following page). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions.

_____ The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

(1) that the defendant be prohibited from possessing a firearm or other dangerous weapon.

(2) that the defendant provide the probation office access to any requested financial information during the course of his term of supervision.

Defendant: Roy Lee Payne

Case Number: CR-2-88-14

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on probation or supervised release pursuant to this Judgment:

1) The defendant shall not commit another Federal, state or local crime;
2) the defendant shall not leave the judicial district without the permission of the court or probation officer;
3) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
4) the defendant shall answer

truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

5) the defendant shall support his or her dependents and meet other family responsibilities;

6) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons;

7) the defendant shall notify the probation officer within seventy-two hours of any change in residence or employment;

8) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a

physician;

9) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

10) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

11) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.

12) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

13) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

14) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

These conditions are in addition to any other conditions imposed by this Judgment.

Defendant: Roy Lee Payne

Case Number: CR-2-88-14

FINE WITH SPECIAL ASSESSMENT

The defendant shall pay to the United States the sum of $5,050.00, consisting of a fine of $5,000.00 and a special assessment of $50.00.

___x___ These amounts are the totals of the fines and assessments imposed on individual counts, as follows:

Count 1 of the superceding indictment

fine: $5,000.00

assessment: $50.00

This sum shall be paid

_____ immediately.

___x___ as follows: within thirty (30) days.

_____ The Court has determined that the defendant does not have the ability to pay interest. It is ordered that:

_____ The interest requirement is waived.

_____ The interest requirement is modified as follows:

CERTIFICATE

The undersigned certifies that a true and perfect copy of the foregoing Petition For Writ of Certiorari, has been served upon Hon. Kenneth W. Starr, Solicitor General, by forwarding the same to him at his address of Department of Justice, Room 5614, Washington, D.C. 20530, in the U. S. Mail with proper postage thereon.

THIS the 21st day of December, 1989.

O. H. WILSON
MAX E. WILSON
WILSON & WILSON
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